

IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF ALABAMA

2005 SEP 19 A 10:07

Jerry Eugene Whitley,

Petitioner,

vs.

J.C. Giles, Warden, et. al.,

Respondent(s)

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Civil Action No. 3:05 CV-427-F

AFFIDAVIT

Before me, a Notary Public in and for said county of Barbour and the State of Alabama at large, personally appeared Jerry E. Whitley, who being known to me and first duly sworn in accordance with the law, did depose and state as follows:

On September 21, 2001, I, Jerry Whitley, was inside my residence sealed from the public in everyway. Inside the residence were also Kaylene White and Wayne Meadows. It was 5:35 p.m.

Steve Moseson had came to the residence to borrow my truck. During the brief time in which he was there to obtain the keys to the truck parked in the driveway he never mentioned any drugs of police.

Upon his exiting the residence there was a very loud knock at the front door and the command "Police, Open Up!" At that time I was at the rear of the residence and I did hear the knock and command at that time. I was approached by Wayne Meadows and informed that the police were at the door and were also surrounding the residence.

At that time I went to the front of the residence and noticed an agent in the rear of the residence pointing his gun at the rear door of the residence. I was able to see this through a hallway window as I was walking to the front.

Upon arrival at the front door I was confronted by Agent Jim Price, whom I had known since I was a child. Agent Price had his gun pointed directly at my face.

Although I was scared he would shoot me I asked "Whats up, Jim?" He told me that they were going to search my residence. At that point I asked for a search warrant and he informed me that no warrant was needed.

Agent Price then grabbed me by my arms and slammed me to the ground outside the front door of the residence, cuffed me and then searched me.

Inside my right front watch pocket there was a small amount of methamphetamine that he pulled out.

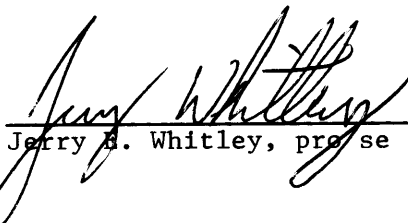
He then placed me into a marked patrol car. As I was being placed into the patrol car Agent Jason Whitten came over and spit in my face.

Also as soon as I was placed in the patrol car I noticed many police agents and the Fire Department were evacuating the entire trailer park.

At no time did I order that the residence should be blown up and there was no wrench in any of my pockets.

Wayne Meadows was placed in the patrol car with me and we were all transported to the Russell County Jail. I was informed by jail officials that the United States Attorney was filing charges and that we would all be transported to Montgomery, Alabama. That never happened.

I remained in jail uninformed until September 24, 2001, in which I was was transported to Russell County Circuit Court and charged with Unlawful Manufacture of a Controlled Substance. Bond was set at \$523,000.00 This charge was not a crime punishable by the State of Alabama at the time I was arrested.

  
Jerry B. Whitley, pro se

NOTARY BLOCK

STATE OF ALABAMA  
COUNTY OF BARBOUR

Suscribed and sworn to (or affirmed) before me this 15<sup>th</sup> day of  
September, 2005.

Carolyn R. Abernethy  
Notary Public

My Commission Expires August 18, 2007

Commission Expiration Date

IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF ALABAMA

Jerry Eugene Whitley,

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vs.

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I, Jerry Whitley, hereby submit the following documents and state that each is authentic copies as supplied to me by the Trial Counsel Honorable Laurel Farrar and/or the Honorable J. Michael Williams, Attorney on appeal in this cause.

Exhibit A: Records of 911 Dispatch of Russell County, Alabama Sheriff's Department.

Exhibit B1: Portion of Transcript of Suppression Hearing testimony of Agent Jason Whitten, "lead agent."

Exhibit B2: Portion of Transcript of Suppression Hearing testimony of Steve Mosesen, "Co-defendant."

Exhibit B3: Portion of Transcript of Suppression Hearing testimony of Cindy Hoyle, "Resident Witness."

Exhibit C: Portion of Transcript of Suppression Hearing testimony of Sgt. James Price, and the Trial Court Judge Honorable George Green.

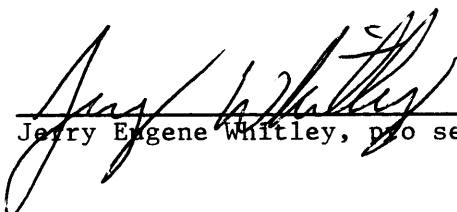
Exhibit D: Portion of Transcript of Suppression Hearing of the District Attorney Buster Landreau: Statement to the Court

Exhibit E: Portion of Transcript of Suppression Hearing of the Statements made by the Court, Honorable George Green.

- Exhibit F: Portion of Transcript of Suppression Hearing testimony of Wayne Meadows, "Co-defendant."
- Exhibit G: Portion of Transcript of Suppression Hearing closing statement of the District Attorney Buster Landreau.
- Exhibit H: Portion of Transcript of Suppression Hearing closing statement of Trial Attorney Laurel Farrar.
- Exhibit I: Search warrant and return.
- Exhibit J: Portion of Transcript of Pretrial Hearing of Trial Attorney Farrar, District Attorney Buster Landreau and Trial Court Honorable George Green.
- Exhibit K: Portion of Transcript of Testimony of Sherwin Boswell of the Alabama Department of Forensic Sciences on cross examination by Trial Attorney Laurel Farrar.

I have not mailed copies of these Exhibits to the Alabama Office of the Attorney General for two reasons:

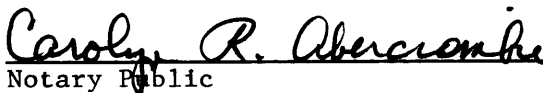
1. The Correctional Facility at which I am housed does not supply copies to inmates.
2. The State has possession of the complete record and/or could obtain any of these documents easily or has possession of them.

  
Jerry Eugene Whitley, pro se

STATE OF ALABAMA  
COUNTY OF BARBOUR

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Notary Public

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My Commission Expires On \_\_\_\_\_

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THE MIDDLE DISTRICT OF ALABAMA

RECEIVED

2005 SEP 19 A 10: 06

Jerry Eugene Whitley,

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vs.

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Respondent(s)

LEBRA W. JACKETT, CLK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA  
Civil Action No. 3:05 CV-427-F

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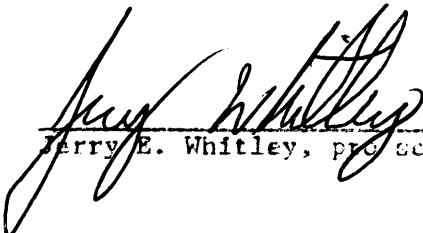
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Jerry E. Whitley, pro se

NOTARY PUBLIC

STATE OF ALABAMA  
COUNTY OF HARBOUR

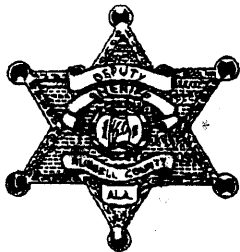
Subscribed and sworn to (or affirmed) before me this 15<sup>th</sup> day of  
September, 2005.

Carolyn R. Abercrombie  
Notary Public

My Commission Expires August 18, 2007

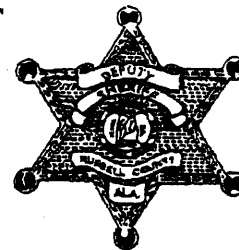
Commission Expiration Date





## RUSSELL COUNTY SHERIFF'S DEPARTMENT

TOMMY BOSWELL, SHERIFF  
POST OFFICE BOX 640  
PHENIX CITY, ALABAMA  
36868-0640  
(334) 298-6535  
FAX (334) 291-7667



SEND TO: Laurel Farrar FAX #: (334) 297 - 3842

ORGANIZATION: \_\_\_\_\_ VOICE #: ( ) \_\_\_\_\_

SUBJECT: dispatch records - 9/21/01

FROM: Tracy Nobles DATE: 12/3/02

SPECIAL INSTRUCTIONS: \_\_\_\_\_

This transmission contains 3 pages, including this cover sheet. If you DO NOT receive all of the pages, please contact Russell County Sheriff's Office at one of the above numbers. Thanking you in advance.



Exhibit A

03/02  
1:24RUSSELL COUNTY SHERIFF'S DEPARTMENT  
FIRE Incident Table:341  
Page: 1

Incident Number: 01LV00099

Nature: Fire Standby

Addr: Rusk Drive Lot 22

City: Phenix City St: AL Zip: 36867 Area: LAVFD Ladonia VFD J>  
Complainant: 126652 Contact:

Lst: Phenix City Police Fst: Mid:

DOB: / / SSN: - - Adr: 1111 Broad Street

Rac: Sx: Tel: (334)448-2800 Cty: Phenix City St: AL Zip: 36867

Addition Codes: STAN

Circumstances: Reported: STAN Observed:

Sndg Officers: Landreau, B.

Snsbl Officer: Landreau, B.

Agency: LVFD

Received By: Massey, S.

How Received: T Telephone

CAD Call ID: 469

When Reported: 17:27:45 09/21/01

Last RadLog: 20:08:34 09/21/01 CMPLT

Durrd between: 17:27:45 09/21/01

Disposition: STB Disp Date: 09/21/01

and: 17:27:45 09/21/01

Misc Entry:

Narrative:

plement:

## INVOLVEMENTS:

Record #	Date	Description	Relationship
126652	09/21/01	Phenix City Police,	*Complainant
469	09/21/01	17:27 09/21/01 Fire Standby	*Initiating Call

## Fire Condition Codes

Code

STAN Standby Assignment

## Incident Responder Detail

Responding Officers

Name	Unit
Landreau, B.	211FF

## Radio Log Table:

Date	Typ	Unit	Code	Zone	Agnc	Description
8:34 09/21/01		211FF	CMPLT	LAVFD	RCSO	incid#=01LV00099 Completed cal
7:57 09/21/01		211FF	ARRVD	LAVFD	RCSO	incid#=01LV00099 Arrived on sc
8:51 09/21/01		211FF	ENRT	LAVFD	RCSO	incid#=01LV00099 Enroute to a

Exhibit A

03/02  
:24

RUSSELL COUNTY SHERIFF'S DEPARTMENT  
CAD Master Call Table:

341  
Page: 1

Long-Term Call ID: 469  
Active Call: Nature: Fire Standby Type: f Priority: 1  
Address: Rusk Drive Lot 22 City: PHE Phenix City  
Tones: : : : Alarm Number:

Complainant: 126652  
Lst: Phenix City Police Fst: Mid:  
Adr: 1111 Broad Street DOB: / /  
Cty: Phenix City St: AL Zip: 36867 SSN: - -  
Tel: (334)448-2800 Race: Sex: Prev Calls: Wants: Adr:   
Alrt:

Contact: Tel: ( ) -  
Address:  
Info:

How Rcvd: T Telephone Occurred between: 17:27:45 09/21/01  
Rcvd by: Massey, S. and: 17:27:45 09/21/01  
Hld Until: : : / / When Rptd: 17:27:45 09/21/01

=====

INVOLVEMENTS:				
Type	Record #	Date	Description	Relationship
FR	01LV00099	09/21/01	Fire Standby	*Initiating Call
IM	126652	09/21/01	Phenix City Police,	*Complainant

Exhibit A

1 would be located there?

2 A Yes, sir.

3 Q Specifically, did the informant give you an  
4 address?

5 A No, sir.

6 Q Did he give you the name of an occupant or the  
7 person who was renting the trailer?

8 A Yes, sir.

9 Q And who was that?

10 A Jerry Whitley.

11 Q Now, did he give you any information as to  
12 whether or not there were drugs located there?

13 A Stated that there was a cook going on.

14 Q Was he able to tell you how long it had been?

15 A He said it was that day.

16 Q And do you recall what time this was when you  
17 spoke with this person?

18 A Probably around noon, 1:00. Maybe 2:00.

19 Q Now, at that point, based on your experience and  
20 training, did you feel like you had sufficient  
21 evidence to obtain a search warrant?

22 A No, sir.

23 Q So what did you do?

24 A Went to the trailer park and set up surveillance  
25 on the trailer.

Exhibit B1

1 A I was walking down the steps coming out of the  
2 door. I was going to get in the truck.

3 Q How far away was your truck from the trailer, if  
4 you recall?

5 A About from me to you.

6 Q And, for the record, how many feet would you say  
7 that is?

8 A 15.

9 Q And did you make it to the truck?

10 A No.

11 Q How far away from the truck were you when  
12 something else happened?

13 A About halfway.

14 Q And what happened then?

15 A Mr. Whitten and there was another fella that was  
16 driving, I believe, he's not in here now, but he  
17 had a gun on me and got out of the car and told  
18 me to get on my knees, and Mr. Whitten searched  
19 me.

20 Q What did they find?

21 A I had \$25.00 worth of meth in my pocket. I was  
22 trying to get my keys out of my pocket, and he  
23 grabbed my hand and said what have you got there,  
24 and I pulled my hand out and it come out.

25 Q Did you say anything?

Exhibit B2

1 A No.

2 Q Then what happened, if you remember?

3 A They handcuffed me.

4 Q Did they put you into any kind of car at that  
5 point?

6 A No. They set me to the side.

7 Q Where were you sitting in relation to the  
8 trailer?

9 A Right there between him and my truck.

10 Q So it was maybe eight feet from the trailer; is  
11 that halfway?

12 A Probably.

13 Q Did you have a full view of the front door?

14 A Yes.

15 Q What happened next that you saw?

16 A They went to the door, knocked on the door, and  
17 Caylene opened the door.

18 Q They being who?

19 A Officer Whitten and the other one.

20 Q Can you describe the other one?

21 A Bald-headed.

22 Q And after Caylene answered, what happened?

23 A They pulled her out of the front door.

24 Q And then where did they put her?

25 A Off to the side.

Exhibit B2

1 Q Did they go back to the front door at that point?

2 A Yes.

3 Q And were their guns drawn?

4 A Yes.

5 Q Did they say anything?

6 A Metro Narcotics. I remember them saying Metro  
7 Narcotics.

8 Q Was the door shut at that point?

9 A Yes.

10 Q What kind of door was it, if you remember?

11 A It's a trailer door.

12 Q Was it the kind you can see through?

13 A No.

14 Q And then what happened?

15 A The door opened.

16 Q Could you see who was on the other side?

17 A I didn't see them till they pulled him out.

18 Q Who pulled who out?

19 A I can't remember exactly who pulled who out. I  
20 know Jerry came out of the door. There were two  
21 officers at the door.

22 Q The same two you described before?

23 A Right.

24 Q What else happened?

25 A After they pulled him out, they went inside and

Exhibit B2

1 Q And do you recall anything unusual happening that  
2 afternoon?

3 A I was standing outside and I seen one of the guys  
4 pull out one of the guys in the house.

5 Q What guys did you see?

6 A It was -- there was a bald-headed guy. There was  
7 a long-headed guy.

8 Q Did they have on Metro Narcotics Task Force gear?

9 A Yes.

10 Q Did you notice anything prior to that?

11 A They pulled them out of that house, just jerked  
12 them out of the house when they knocked on the  
13 door.

14 Q Who did they jerk out of the house? Do you see  
15 him in the courtroom, the person that was pulled  
16 out of the house?

17 A Huh-uh (negative response).

18 Q Was it a female or male?

19 A It was a male.

20 Q And this was across the street from where you  
21 live?

22 A Diagonally from where I lived.

23 Q Diagonal. So how far away from you -- how far  
24 away from that home were you when you were  
25 watching? Were you on the road?

Exhibit B3



1 A No, ma'am. We didn't have an address.

2 Q Did you have a form that you were going to use as  
3 soon as you could fill in the blanks?

4 A We had no search warrant whatsoever. We went out  
5 there under -- we went to pull surveillance on it  
6 to see if there were any -- actually, to find the  
7 trailer and then to see if there's any activity.

8 Q Did you personally arrest Steve Moseson?

9 A Did I actually arrest him? I was present when he  
10 was arrested, but I don't think I actually placed  
11 the cuffs on him.

12 Q Did you read him his rights?

13 A At that time? No, we didn't read him his rights.

14 Q Did you personally observe the pat-down?

15 A Yes.

16 Q Did the person patting Moseson down reach into  
17 any pocket?

18 MR. LANDREAU: Judge, I object. It's  
19 irrelevant to this Defendant as to how some other  
20 defendant was searched. This Defendant has no  
21 standing.

22 THE COURT: Well, I think this was brought  
23 out on direct examination that he was arrested  
24 and it's part of -- I don't know that this  
25 Defendant would have standing to challenge that

Exhibit C

1 arrest. It's part of the transaction that was  
2 used to lead to the entry into the trailer, so  
3 I'll overrule your objection.

4 Q You can answer the question.

5 A When he was patted down, I believe they did go in  
6 his pocket.

7 Q Did you -- withdraw. Where did Moseson go when  
8 he came out of the building, if anywhere, before  
9 he went to the vehicle?

10 A He came straight out and started walking straight  
11 to the vehicle. It's a red pickup truck.

12 Q Where was the red pickup truck parked in relation  
13 to the trailer?

14 A Right on the street, right by the -- there were  
15 several cars. It was parked just kind of in the  
16 driveway but facing away from the trailer, facing  
17 north.

18 Q So was he actually standing on the property or on  
19 the road?

20 A He was on the property.

21 Q Did Metro Narcotics officers approach him by  
22 walking onto the property?

23 A Yes, we sure did.

24 Q How many feet was it from the road, if you know?

25 A It was like half on the road and half in the

Exhibit C

1 A Yes, sir, if somebody had been watching it.

2 Q Let me ask you. Had the informant given you any  
3 information about anything unusual about this  
4 trailer as far as how it was rigged?

5 A Yes, sir.

6 MS. FARRAR: Objection.

7 Q What had the informant told you?

8 THE COURT: I'm going to sustain the  
9 objection. I don't think that's necessary at  
10 this point, and especially since this is  
11 apparently hearsay testimony that's given to  
12 Officer Lawrence, not to this officer. Is that  
13 correct?

14 MR. LANDREAU: Judge, my understanding --  
15 let me ask that because that's not --

16 Q Did the informant give this information directly  
17 to you or to Sergeant --

18 A Yes, sir. I spoke on the phone with the  
19 informant while he was in Sergeant Lawrence's  
20 office.

21 MS. FARRAR: I would object for relevance.

22 MR. LANDREAU: Judge, it goes to the state  
23 of mind of the officers in determining whether or  
24 not they felt like they had exigent circumstances  
25 and/or an emergency situation.

Exhibit D

1 THE COURT: Well, I would think that would  
2 already be established by the fact that it's been  
3 testified that two individuals were requested to  
4 blow it up.

5 MR. LANDREAU: Yes, sir.

6 THE COURT: And I think that would be  
7 sufficient.

8 MR. LANDREAU: We'll move on.

9 Q Now, did Mr. Moseson have any type of contraband  
10 on him?

11 A Yes, sir.

12 Q After meeting with Mr. Moseson, did officers  
13 approach the mobile home?

14 A Yes, sir.

15 Q Who all approached and where did they approach?

16 A Agent Memmo went to the rear of the trailer, and  
17 myself and Sergeant Price went to the front door.

18 Q What was y'all's purpose in going to the front  
19 door?

20 A We were going to speak to Mr. Whitley.

21 Q Were you trying to confirm something?

22 A Yeah. We were trying to establish if this was  
23 where Mr. Whitley lived and get an address on the  
24 trailer.

25 Q Did someone knock on the door?

Exhibit E

1 methamphetamine lab in there?

2 MS. FARRAR: Objection, Your Honor.  
3 Relevance.

4 THE COURT: Well, this is a motion to  
5 suppress hearing at this point, and I'll sustain  
6 the objection.

7 Q Did you notice some fishing line in that trailer?

8 A No, sir, not really, no.

9 Q Mr. Meadows, wasn't there some line that ran from  
10 the front door to a candle or some type of flame  
11 in the back?

12 A Not that I'm aware of.

13 Q Do you recall Jerry Whitley telling you to blow  
14 the trailer up?

15 A No, sir. I don't recall him telling me to blow  
16 the trailer up, no, sir.

17 Q Do you remember the plea agreement you entered  
18 into?

19 A Yes, sir.

20 Q You remember testifying in front of the Court?

21 A I heard -- I heard someone on the outside of the  
22 house say light it. That's what I heard. I  
23 didn't hear anybody say anything about blow  
24 anything up.

25 Q Well, you recognize the voice that said light it?

Exhibit F

1 MR. LANDREAU: No, sir, unless the Court  
2 wishes some type of closing argument.

3 THE COURT: You may do so if you want to,  
4 but I'm not going to require it.

5 MR. LANDREAU: Judge, I'll keep it very  
6 brief. This is a classic case of exigent  
7 circumstances. The officers received information  
8 that was insufficient for a search warrant. They  
9 went there to set up surveillance. They  
10 encountered an individual who smelled strongly of  
11 the precursor chemicals to methamphetamine. They  
12 went to the door in an attempt to verify who  
13 lived there, and at that point they were  
14 confronted by people screaming to light it or  
15 blow it up, and they entered the trailer to  
16 protect themselves and the citizens from the  
17 threat of an explosion. Also, obviously, it  
18 would serve the dual purpose to preserve  
19 evidence. They went in there and secured Mr.  
20 Meadows, brought him out, and then immediately  
21 got a search warrant.

22 We think it's a classical case of probable  
23 cause that coexists with exigent circumstances.

24 THE COURT: Ms. Farrar, do you have anything  
25 you'd like to add?

Exhibit G

1 MS. FARRAR: Just really briefly, Your  
2 Honor. Police officers cannot create their own  
3 exigent circumstances. Rather than in  
4 encountering an individual, they went up to him  
5 and actually arrested him illegally and guns were  
6 drawn, and they actually did raid the residence  
7 of my client. It was an illegal arrest, and  
8 anything that stems from it would be poisonous  
9 fruits.

10 Also, even though perhaps it could be argued  
11 that my client, Mr. Whitley, does not have  
12 standing to use the Moseson arrest, it actually  
13 is what was used to create the exigent  
14 circumstances, so I believe this would be  
15 allowable. That's all I have, Your Honor.

16 THE COURT: All right. The Court would deny  
17 the motion to suppress. Thank you.

18 MS. FARRAR: Your Honor, I would like to ask  
19 during the trial if I might be able to have a  
20 continuing objection to the admission of any of  
21 the arrests itself, the search warrant, any  
22 statements or seized contraband as a result of  
23 what we would like to preserve our objection as  
24 an illegal arrest.

25 THE COURT: Yeah. I'll let you have a

Exhibit H

## SEARCH WARRANT

(X) State of Alabama

SL0105214

Case Number

( ) Municipality

VS.

STATE OF ALABAMA

In the \_\_\_\_\_ Court

Of Russell CountyJerry Whitley

Defendant

TO ANY LAW ENFORCEMENT OFFICER WITHIN THE STATE OF ALABAMA:

Affidavit in support of application for a search warrant having been made before me, and the Court's finding that grounds for the issuance exists or that there is probable Cause to believe that they exist, pursuant to Rule 3.8 Alabama Rules of Criminal Procedure, you are hereby ordered and authorized to fore with search:

THE FOLLOWING PERSON OR PLACE: a green and white trailer home on Rusk Drive, Phenix City, Alabama. This residence is between Lots #21 and #50 and accross from Lot #50. See exhibit A for diagram of area.

FOR THE FOLLOWING PROPERTY: There is being concealed at the above residence methamphetamine, materials for making methamphetamine, weapons and hazardous chemical byproducts from making methamphetamine. The use, possession and manufacturing being a violation of Sections 13A-12-211 and 13A-12-212 of The Code of Alabama, as Amended.

and make return of this warrant and an inventory of all property seized by me within \_\_\_\_\_ ( ) days (not to exceed ten (10) days as required by law.)

( ) This warrant may only be executed

( ) in the daytime between the hours of

\_\_\_\_\_ M., and

\_\_\_\_\_ M.

( ) The Court finds probable cause to believe that a nighttime search is necessary and this warrant may by executed at any time of the day or night.

ISSUED TO: Agent Jason Whitten, Metro Narcotics Task Force.

at 8:25 o'clock, pm, this 21st day of September, 2001.

[Signature]  
Judge

Exhibit I



000085

## RETURN AND INVENTORY

I certify that I executed the foregoing Search Warrant as directed therein by searching the person or place therein described at 2045 o'clock PM, Sept. 21 2001, and:

( ) Did not find and seize any property located

or:

(✓) Found and seized the following described property and made return of same to the court at 2045 o'clock PM, Sept. 21 2001:

- 1) Ithaca 22 Cal rifle model M49 (R. Truck TW)
- 2) Ruger M77 rifle 308 Cal (R. Room) TW
- 3) Ruger 22 Cal Pistol Mark II (Safe) TW, 4) Davis 22 Cal Pistol 0m 22.
- 5) Bryco Arms 9mm pistol J9 (Living room TW), 6) Ruger P-89 9mm Pistol (case TW)
- 7) Glock M-31 357 pistol (Living room TW) 8) Radio Shack Scanning receiver.
- 9) Three walkie-talkies, 10) Cable Scanner, 11) Three Cell phones
- 12) CCTV Camera system, 13) Minolta Camera 35mm
- 14) Canon Camcorder 8mm
- 15) 4 Chemistry Books, 16) Night Owl optics Night Vision
- 17) 7 pistol Magazines, 18) Four Boxes of Pistol Ammo
- 19) one brief case w/ Papers, 20) four 8mm Tapes.
- 21) Quantity of Methamphetamine, 22) Meth Making Materials
- 23) quantity of MARIJUANA, 24) Various paper work and documents.

( ) Copy or warrant and endorsed copy of inventory left in accordance with Rule 3.11(a), Alabama Rules of Criminal Procedure.

Date: 09 21 01

S/LD J. WL M16

Signature of Law Enforcement Officer

Agent, Metro N.T.F.

Title and Agency

## RECEIPT

I acknowledge receipt of return of the foregoing Search Warrant and all items, if noted on the foregoing inventory, at the date and time noted above.

Exhibit I

1 THE COURT: Which was a two full months  
2 ago.

3 MS. FARRAR: I filed the motion for his  
4 expenses to fly out here, and I was told -- I  
5 believe that the Court said let's wait on what  
6 the results are and then I will decide whether to  
7 grant the extraordinary expenses for him to  
8 travel out here, and then I did the motion for  
9 extraordinary expenses as soon as I got the  
10 results.

11 THE COURT: Which shows that there was  
12 methamphetamine present?

13 MS. FARRAR: Yes, Your Honor. It was -- my  
14 offer of proof would be that --

15 THE COURT: And you would want to fly the  
16 witness here to show that there was  
17 methamphetamine present?

18 MS. FARRAR: To show that it was in such  
19 small a quantity related to the liquid substance,  
20 that that would be preserved for the record.

21 THE COURT: Well, do you have a written  
22 report from this individual?

23 MS. FARRAR: Yes, Your Honor.

24 THE COURT: Will the State stipulate to that  
25 report?

Exhibit J

1 MR. LANDREAU: Your Honor, we have no  
2 problem with her introducing the report in terms  
3 of an appellate record. Our position is under  
4 Alabama law, the ratio of meth to other  
5 substances in the mixture is immaterial and  
6 irrelevant, so we would object to it going to the  
7 jury. But if she wants to place it there for  
8 some purposes of an issue down the road, we don't  
9 have any objection to that. We just don't think  
10 it should go to the jury.

11 THE COURT: Well, there's been a Motion in  
12 Limine that has been filed --

13 MR. LANDREAU: Yes, sir.

14 THE COURT: -- in this matter in which the  
15 State is asking that the argument not be made as  
16 being impermissible. Do you have any response to  
17 that, Ms. Farrar?

18 MS. FARRAR: Your Honor, I would object to  
19 the Motion in Limine. The jury has a right to  
20 know the total circumstances surrounding this  
21 alleged methamphetamine lab drug bust, and my  
22 client has received information that was prepared  
23 by the expert witness, and I believe that it  
24 would be in the interest of justice that this  
25 information and report be preserved for the

Exhibit J

1 record and placed in the file. If it's the  
2 Court's ruling that the jury doesn't see it,  
3 that's one thing, but I would want it in the file  
4 to be preserved.

5 THE COURT: Let me say that I think it would  
6 be permissible for the defense to show the  
7 percentage of methamphetamine in any  
8 controlled -- in any volume of material other  
9 than what is there.

10 MS. FARRAR: I don't understand.

11 THE COURT: Well, what I'm saying is your  
12 client is being charged with possession of 28  
13 grams or more of methamphetamine; is that  
14 correct?

15 MR. LANDREAU: Yes, Your Honor.

16 THE COURT: And if you have something to  
17 show there is not 28 grams in there, in this case  
18 you have a mixture that has methamphetamine in  
19 it, according to your report. Does it state the  
20 actual amount of methamphetamine in that  
21 mixture?

22 MS. FARRAR: Yes, Your Honor.

23 MR. LANDREAU: Your Honor, in response,  
24 State's position is, under case law, if it's in a  
25 mixture such as this, it is the total weight of

Exhibit J

1 the mixture, not the weight of the active  
2 ingredient within the mixture.

3 MS. FARRAR: And I have two arguments about  
4 that. The case law is certainly that a mixture  
5 is defined as containing the drug and containing  
6 other substances, but there has been case law  
7 about what other substances can be defined as  
8 being part of the mixture and what are excluded.

9 THE COURT: Do you have that for me to look  
10 at?

11 MS. FARRAR: Yes, Your Honor.

12 MR. LANDREAU: Ms. Farrar, are you referring  
13 to the Fletcher case?

14 MS. FARRAR: Yes.

15 MR. LANDREAU: Your Honor, we submit that's  
16 not applicable. That case says if you have two  
17 substances that are together that do not combine  
18 into one mixture, in the Fletcher case it was  
19 crack cocaine and soap chips, that's not a  
20 mixture. But Fletcher also holds that if the  
21 methamphetamine or drugs are comingled and  
22 diffused among a liquid or other substance, then  
23 you do count the entire weight of the mixture.

24 MS. FARRAR: Our position would be that it's  
25 possible in our case that it's slightly different

Exhibit J

1 than that. It's not soap certainly, but that  
2 there could be new law by the Alabama Court of  
3 Criminal Appeals up to the Supreme Court. There  
4 is a Federal law where mixtures are analyzed to  
5 determine the amount of alleged controlled  
6 substance.

7 THE COURT: Do you have the Fletcher case  
8 that you have cited?

9 MS. FARRAR: Yes, sir.

10 MR. LANDREAU: Here it is, Judge.

11 (Brief pause.)

12 THE COURT: All right. Do you have  
13 something further, Ms. Farrar?

14 MS. FARRAR: I do not have the case with me  
15 or the case name, but in my research I found a  
16 case where the Defendant had appealed or had a  
17 Rule 32 for ineffective assistance of counsel.  
18 One of the allegations was that the defense  
19 attorney asked the question of the forensic  
20 scientist did you check the ratio of the alleged  
21 controlled substance to the other ingredients of  
22 the mixture which was weighed. The scientist  
23 said in the presence of the jury, no, because I  
24 didn't have to. The Defendant was arguing that  
25 that was a showing that the attorney was not

Exhibit J

1 learned in the law, but the Justices said, no,  
2 that was not an example of ineffective assistance  
3 of counsel. That was something that was  
4 appropriate, so I would just offer that.

5 THE COURT: May I see the report that you  
6 have from your --

7 MS. FARRAR: Yes, Your Honor.

8 THE COURT: -- testing?

9 MS. FARRAR: I believe Mr. Landreau has a  
10 copy, and I've marked it as Defendant's Exhibit  
11 1. It has five pages.

12 THE COURT: Now, this is his result just of  
13 the sample?

14 MS. FARRAR: Of the samples. They each  
15 contained five milliliters. There were two  
16 samples. One was found to have approximately  
17 point three milligrams per milliliter, and the  
18 other sample was found to have 1.8 milligrams per  
19 millileter. Attached to the report is the CV of  
20 the independent expert, Dr. John Hiatt.

21 THE COURT: I don't see any problem with  
22 this report being entered into evidence and being  
23 presented to the jury. There's been a Motion in  
24 Limine that has been filed, and the Court would  
25 grant the State's Motion in Limine to the extent

Exhibit J

1 that it would be impermissible for you to argue  
2 to the jury that a mixture containing  
3 methamphetamine is not sufficient for conviction.

4 MR. LANDREAU: Judge, just for  
5 clarification, as I understand it, the Court is  
6 telling defense counsel they cannot argue that  
7 there was really less than 28 grams of meth  
8 regardless of the weight of the mixture; is that  
9 correct?

10 THE COURT: No. What I'm telling you is she  
11 cannot bring up that there is -- that a jury  
12 cannot convict upon the fact that there is less  
13 than the actual 28 grams of methamphetamine; that  
14 it is clearly the law that it is a mixture  
15 containing methamphetamine of 28 grams or more.  
16 And the Court is going to instruct the jury as to  
17 what the definition of the mixture as cited by  
18 the Court in the Fletcher opinion.

19 MR. LANDREAU: Judge, do you want to keep  
20 the Fletcher --

21 THE COURT: I wrote down the definition.

22 MR. LANDREAU: Oh, okay. I was just going  
23 to let you keep the case because I didn't think I  
24 would be needing it again.

25 MS. FARRAR: But, Your Honor, I would be

Exhibit J



1 allowed to argue to the jury simply the fact that  
2 there was found to be this much proportion?

3 THE COURT: Yeah. I think you are entitled  
4 to ask of the State's witness what the proportion  
5 of methamphetamine is to that as well as present  
6 the proportion from your expert analysis.

7 MS. FARRAR: Your Honor, I don't have my  
8 expert to get this evidence in. I don't know how  
9 I can get it in without laying the foundation  
10 of --

11 THE COURT: Well, I don't see any problem  
12 with there being a stipulation that that be  
13 entered into evidence.

14 MR. LANDREAU: No problem with that.

15 THE COURT: And it has his background as  
16 well as --

17 MS. FARRAR: Thank you, Your Honor.

18 THE COURT: -- education and training and  
19 experience to show that he is an expert.

20 MS. FARRAR: Yes, sir. And we need to get  
21 that on the record before the jury, or is it  
22 sufficient to have it on the record now?

23 THE COURT: Well, I mean, you'll be able to  
24 read that out to the jury as part of your  
25 exhibit.

Exhibit J

1 similar tests to make sure that it's working  
2 properly?

3 A On the infrared spectrophotometer, we would run  
4 what we call a polystyrene every morning or  
5 anytime the instrument is going to be used that  
6 particular day. That will usually give us, I  
7 guess you would say, a diagram of that particular  
8 polystyrene. And from there we can look at it  
9 and tell whether or not the instrument is  
10 performing properly.

11 Q And how would I be able to know if there is 1.8  
12 milligrams in a milliliter of a sample of the  
13 seized substance? How would I be able to know  
14 about how much was the quantity of meth in that  
15 particular sample?

16 A The only way I could have determined that was to  
17 do a quantitation on that particular sample.

18 Q Based on the data that was arrived at by our  
19 independent expert, can you give a ballpark  
20 figure of about how much was in the samples which  
21 we have before us today?

22 MR. LANDREAU: Your Honor, same objection  
23 previously stated.

24 THE COURT: Overrule the objection.

25 A Based on the report from your independent

Exhibit K

1 scientist expert, I cannot conclude as to whether  
2 his results are correct because I have no idea  
3 what instrumentation he used. I have no idea how  
4 he may have performed his extractions or his  
5 analysis of the samples.

6 Q I'm only asking you if they're correct, what  
7 would his analysis have come up with as far as  
8 how many grams were present in the quantity of a  
9 liquid as by volume, grams per volume?

10 A Based on his analysis, I cannot say because, like  
11 I just testified, I do not know what he did and  
12 how he did it.

13 Q Thank you. I've got one more. Did you find any  
14 methamphetamine in any of these samples that you  
15 seized that was in a form suitable for ingesting  
16 based on your experience and scientific  
17 knowledge?

18 A Based on the evidence that I collected and on my  
19 analysis, the residue that was found on the  
20 aluminum foil, it's a possibility it could have  
21 been smoked, ingested, or used at any particular  
22 time. Based on some of the residue, something I  
23 removed from the filter papers, you could  
24 actually go back and take those filter papers and  
25 maybe extract it with an alcohol and then dry it

Exhibit K